

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FRACTIONAL VILLAS, INC.,

Plaintiff,

vs.

REFLECTIONS, et al.,

Defendant.

CASE NO. 08CV1423 DMS (AJB)

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT CHRISTOPHER H.
ZOCKOLL'S MOTION TO
DISMISS**

[Doc. 25]

Presently before the Court is Defendant Christopher H. Zockoll's Motion to Dismiss for lack of personal jurisdiction. For the following reasons, the motion is granted in part and denied in part.

I.

BACKGROUND

Plaintiff Fractional Villas is in the business of marketing, advertising, and selling fractional ownership interests in luxury properties. (Compl., ¶ 2.) In October 2007, Plaintiff entered into negotiations with William Clapperton, managing partner of Aqua Surf LLC, regarding development and marketing of real property located at 2663 Ocean Front Walk #3, San Diego, California. (*Id.* at ¶ 34.) In November 2007, Plaintiff entered into a consulting agreement with Aqua Surf regarding the property, a broker agreement with William Clapperton, Clapperton Coastal Properties, and Chris Love, and several non-disclosure agreements to protect Plaintiff's confidential information. (*Id.* at ¶¶ 34-38.)

1 Plaintiff alleges that Defendants Reflections, Reflections Private Residence Club, LLC, and
 2 Christopher H. Zockoll intentionally interfered with Plaintiff's business dealings and induced Mr.
 3 Clapperton and Aqua Surf to breach their agreements with Plaintiff. (*Id.* at ¶¶ 34-48.) The property
 4 was ultimately sold and Defendants received consulting fees and/or commissions. (*Id.* at ¶ 45.)

5 Plaintiff further alleges that it owns a copyright on certain content used on its website,
 6 www.fractionalvillas.com, and that it has a copyrighted "Reservation Agreement" which it uses in
 7 transactions involving fractional ownership interest of luxury properties. (*Id.* at ¶¶ 15, 26-27.)
 8 Plaintiff alleges that Defendants infringed the copyright on its website, www.time2reflect.com, and
 9 that Defendants used significant portions of the Reservation Agreement in its own transactions. (*Id.*
 10 at ¶¶ 23, 30.)

11 Defendant Zockoll is a resident of Nevada and Defendants Reflections and Reflections Private
 12 Residence are Nevada entities. (*Id.* at ¶¶ 3-5.) Zockoll is president of Reflections. (*Id.* at ¶ 5.)
 13 Plaintiff alleges that Reflections and Reflections Private Residence conduct business in California and
 14 that each Defendant was the agent or alter ego of the other Defendants. (*Id.* at ¶¶ 3-4, 8.) Plaintiff
 15 alleges that personal jurisdiction is proper because Defendants purposefully directed activities in the
 16 Southern District of California. (*Id.* at ¶¶ 9-13.)

17 Plaintiff filed suit on August 5, 2008, alleging claims of copyright infringement, unfair
 18 competition, and intentional interference with contract and prospective economic advantage. On
 19 September 15, 2008, the clerk entered default against all three Defendants. (Docs. 9-11.) On June 24,
 20 2009, Defendant Zockoll filed a motion to set aside the default, which this Court granted on December
 21 8, 2009. (Docs. 14 & 23.) Zockoll filed the present motion to dismiss on January 12, 2010. (Doc.
 22 25.) Plaintiff filed an opposition. (Doc. 26.) Zockoll did not file a reply.

23 **II.**

24 **LEGAL STANDARD**

25 Defendant moves for dismissal of Plaintiff's Complaint for lack of personal jurisdiction.¹ On
 26 a motion to dismiss, the plaintiff bears the burden to demonstrate the court has personal jurisdiction

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 28 ¹ Defendant also seeks dismissal under Rule 12(b)(6) for failure to state a claim, but does so
 by arguing that the Court lacks personal jurisdiction over Defendant. Accordingly, the Court addresses
 only the personal jurisdiction issue.

1 over the defendant. *Brayton Purcell LLP v. Recordon & Recordon*, 575 F.3d 981, 985 (9th Cir. 2009.)
 2 In the absence of an evidentiary hearing, the plaintiff need only make a “prima facie showing of
 3 jurisdictional facts to withstand the motion to dismiss.” *Id.* (quoting *Pebble Beach Co. v. Caddy*, 453
 4 F.3d 1151, 1154 (9th Cir. 2006).). Any uncontested allegations in the plaintiff’s complaint are
 5 taken as true, and any factual conflicts are resolved in the plaintiff’s favor. *Id.*

6 Personal jurisdiction can be established over a defendant “who could be subjected to the
 7 jurisdiction of a court of general jurisdiction in the state in which the district court is located.” Fed.
 8 R. Civ. P. 4(k)(1)(A). Because the California jurisdictional “long-arm” statute permits the exercise
 9 of jurisdiction to the full extent permitted by the United States Constitution, the state and federal limits
 10 are co-extensive. *See* Cal. Civ. Proc. Code § 410.10. Thus, the singular issue is whether the Court’s
 11 exercise of jurisdiction violates our Constitutional principles of due process. *Haisten v. Grass Valley*
 12 *Med. Reimb. Fund, Ltd.*, 784 F.2d 1392, 1396 (9th Cir. 1986).

13 There is a three-prong test to determine whether a party has sufficient minimum contacts with
 14 the forum to establish specific personal jurisdiction:²

15 (1) The non-resident defendant must purposefully direct his activities
 16 or consummate some transaction with the forum or resident thereof; or
 17 perform some act by which he purposefully avails himself of the privilege
 of conducting activities in the forum, thereby invoking the benefits and
 protections of its laws;

18 (2) the claim must be one which arises out of or relates to the
 19 defendant’s forum-related activities; and

20 (3) the exercise of jurisdiction must comport with fair play and
 substantial justice, *i.e.* it must be reasonable.

21 *Brayton Purcell*, 575 F.3d at 985 (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797,
 22 802 (9th Cir. 2004)).

23 When a court evaluates specific jurisdiction for multiple defendants, “each defendant’s contacts
 24 with the forum State must be assessed individually,” regardless of any relationship shared amongst the
 25 defendants. *Calder v. Jones*, 465 U.S. 783, 790 (1984). In cases where defendants may include a

27 ² Plaintiff does not argue that Zockoll is subject to general personal jurisdiction, and it does
 28 not appear that the Court would be able to exercise general personal jurisdiction over Defendant.
 Although Plaintiff alleges that Defendant once owned property in California, the property was sold in
 May 2006, and is therefore insufficient for establishing jurisdiction.

1 corporation, as well as its employees or directors, those “who act in their official capacity are [not]
 2 somehow shielded from suit in their individual capacity. But jurisdiction over an employee does not
 3 automatically follow from jurisdiction over the corporation which employs him.” *Keeton v. Hustler*
 4 *Magazine, Inc.*, 465 U.S. 770, 781, n.13 (1984). However, the Ninth Circuit has drawn a crucial
 5 distinction, declaring that “the corporate form may be ignored in cases in which the corporation is the
 6 agent or alter ego of the individual defendant, or where there is an identity of interests between the
 7 corporation and the individuals.” *Davis v. Metro Prod., Inc.*, 885 F.2d 515, 520-21 (9th Cir. 1989)
 8 (internal citation omitted).

9 **III.**

10 **DISCUSSION**

11 Defendant argues the Court lacks personal jurisdiction because he resides in Nevada and does
 12 not conduct business in California. Defendant contends that his website is an insufficient basis to
 13 establish personal jurisdiction. Plaintiff argues that the requirements for personal jurisdiction are met
 14 because the Complaint alleges that Defendants, including Zockoll, induced a third party to breach an
 15 agreement regarding the sale of property in San Diego. Plaintiff further contends that Zockoll was an
 16 owner of property in San Diego, that Zockoll conducted a seminar in San Diego to promote his
 17 fractional consulting services, and Zockoll contacted William Clapperton regarding Zockoll’s
 18 consulting services. (Savoia Decl. ¶¶ 4-6.)

19 Initially, although the allegations in the Complaint are directed to “Defendants” as a whole, and
 20 not to Zockoll individually, Plaintiff alleges that Zockoll is the President of Reflections, is the alter
 21 ego of two entities which own Reflections Private Residence Club, and that each Defendant is the alter
 22 ego of the other Defendants. (Compl. at ¶¶ 5-8.) Thus, taking these allegations as true, the Court
 23 “disregard[s] the corporate form for jurisdictional purposes” and treats Defendants Reflections,
 24 Reflections Private Residence Club, and Zockoll as one and the same. *Davis*, 885 F.2d at 520.

25 **A. Purposeful Direction**

26 A defendant will satisfy the purposeful direction prong if he or she “(1) committed an
 27 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is
 28 likely to be suffered in the forum state.” *Brayton Purcell*, 575 F.3d at 986. (citations omitted).

1 An intentional act simply requires “intent to perform an actual, physical act in the real world,
 2 rather than an intent to accomplish a result of consequence of that act.” *Id.* Here, Plaintiff alleges an
 3 intentional act in that Defendants contacted Mr. Clapperton and induced him to breach the agreements
 4 with Plaintiff. (Compl. at ¶ 39-42.) Thus, this element is met.

5 The defendant’s conduct must be expressly aimed at the forum. *Brayton Purcell*, 575 F.3d at
 6 986. Defendant is correct in noting that maintenance of a passive website is insufficient to satisfy the
 7 express aiming prong. *Id.* Here, however, the allegations go beyond Defendant’s website; Plaintiff
 8 alleges that Defendant reached out to a property owner in California to solicit business. It is this
 9 conduct, directly targeted at the forum, which satisfies the express aiming prong.

10 Finally, it must be foreseeable that Plaintiff would be harmed and that the harm would be
 11 suffered in the forum. *Id.* at 988. Here, Plaintiff alleges that William Clapperton informed Defendants
 12 of Plaintiff’s business interests in the property in San Diego and yet Defendants induced Mr.
 13 Clapperton to breach the contracts with Plaintiff. (Compl. at ¶¶ 90-92.) Thus, it was foreseeable that
 14 Plaintiff would suffer adverse effects in San Diego as a result of Defendant’s acts.

15 Accordingly, the purposeful direction prong is satisfied.

16 **B. Arising Out Of**

17 In the Ninth Circuit, courts rely on the “but for” test to determine whether a particular claim
 18 arises out of a defendant’s forum-related activities. *Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir.
 19 1995). Thus, Plaintiff must show that “but for” Defendant’s contacts with the forum, Plaintiff would
 20 not have suffered an injury.

21 Claim 1 of Plaintiff’s complaint is for copyright infringement of Copyright No. TX-6-613-055,
 22 which is a copyright for Plaintiff’s website, www.fractionalvillas.com (“Website Copyright”).
 23 (Compl. at ¶¶ 15, 49-54.) This claim alleges that Defendants used Plaintiff’s copyrighted material on
 24 Defendants’ website. (*Id.* at ¶ 51.) There are no allegations that tie this claim to Defendant’s contacts
 25 in California. Plaintiff makes no showing that Defendants’ website alone is sufficient to establish
 26 personal jurisdiction over Defendant in California. Accordingly, Claim 1 does not arise out of
 27 Plaintiff’s contacts with the forum.

28 Claim 2 is for infringement of Copyright No. TX-6-834-962, which is for a “Priority Purchaser

1 Reservation Agreement" ("Reservation Agreement"). (*Id.* at ¶¶ 26, 55-60.) Plaintiff alleges that
 2 Defendants have used significant portions of Plaintiff's copyrighted material in their own transactions
 3 involving fractional ownership of luxury properties. (*Id.* at ¶ 30.) Plaintiff alleges that Defendants
 4 obtained this copyrighted material by inducing Clapperton to breach the non-disclosure agreement with
 5 Plaintiff and providing Plaintiff's confidential material to Defendants. (*Id.* at ¶¶ 41-43.) Therefore,
 6 but for Defendant's contact with Clapperton, Defendant would not have obtained Plaintiff's
 7 copyrighted material. Accordingly, this claim arises out of Defendant's contacts with the forum.

8 Claim 3 is for unfair competition based on Defendants' infringing use of the Reservation
 9 Agreement. Claim 4 is for unfair competition based on both the Website Copyright and the
 10 Reservation Agreement. Since both claims rely on infringement of the Reservation Agreement, both
 11 claims arise out of Defendant's contacts with the forum.

12 Claims 5 and 6 are for intentional interference with contract and intentional interference with
 13 economic relationship. These claims rely directly on Defendant reaching out to William Clapperton
 14 and inducing the breach of Plaintiff's contracts. Accordingly, the claims arise out of Defendant's
 15 contact with the forum.

16 **C. Reasonableness**

17 "Where a defendant who purposefully has directed his activities at forum residents seeks to
 18 defeat jurisdiction, he must present a compelling case that the presence of some other considerations
 19 would render jurisdiction unreasonable." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).
 20 In the Ninth Circuit, the reasonableness of an assertion of personal jurisdiction over a nonresident
 21 defendant is determined by balancing the following seven factors:

22 (1) The extent of purposeful interjection into the forum state;
 23 (2) The burden on the defendant of defending in the forum;
 24 (3) The extent of conflict with the sovereignty of defendant's state;
 25 (4) The forum state's interest in adjudicating the dispute;
 26 (5) The most efficient judicial resolution of the controversy;
 27 (6) The importance of the forum to plaintiff's interest in convenient and effective
 28 relief;
 29 (7) The existence of an alternative forum.

30 *Fed. Deposit Ins. Corp. v. British-American Ins. Co.*, 828 F.2d 1439, 1442 (9th Cir. 1987). Because
 31 the Court has found that Defendants "purposefully directed [their] activities to California, personal

1 jurisdiction is presumptively reasonable" and Defendants bear the burden of proving unreasonableness.

2 *Sher v. Johnson*, 911 F.2d 1357, 1364 (9th Cir. 1990).

3 Here, Defendant has not argued that exercise of personal jurisdiction would be unreasonable,
4 except to the extent he argues that he lacks minimum contacts with California. Thus, Defendant has
5 not rebutted the presumption of reasonableness.

6 Accordingly, the Court finds that there is specific personal jurisdiction over Defendant Zockoll
7 with respect to Claims 2-6 of Plaintiff's complaint.

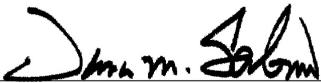
8 **IV.**

9 **CONCLUSION**

10 For the reasons stated above, Defendant's motion is granted in part and denied in part. The
11 motion is granted as to Claim 1. The motion is denied as to Claims 2-6.

12 **IT IS SO ORDERED.**

13 DATED: April 19, 2010

14 
15 HON. DANA M. SABRAW
16 United States District Judge

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